

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
December 4, 2003**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, December 4, 2003, beginning at 2:00 P.M. at the Town of Warrenton Police Department, 333 Carriage House Lane, Warrenton, Virginia. Members present were Mrs. Peg Mailler, Chairperson; Mr. John Meadows, Secretary; Mr. James W. Van Luven; Mr. Maximilian Tufts, Jr.; Ms. Sonja Addison; Mr. Mark Rohrbaugh. Also present were Ms. Tracy Gallehr, Assistant County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Doug Morgan, Senior Planner; and Mrs. Debbie Dotson, Office Associate III.

MINUTES: On a motion made by Mr. Meadows and seconded by Mr. Tufts, the Board of Zoning Appeals voted to approve the minutes of the October 2, 2003 meeting. The minutes for the November 6, 2003 meeting were not ready at this time.

The motion carried unanimously.

Mr. Serf Guerra stated that he wanted to publicly acknowledge Traci Atkins and Kimberley Johnson for the quick response to a situation in his neighborhood that had the potential to impact the county. He stated that it is commendable for county employees to listen to taxpayer problems and respond with promptness and efficiency, as was the case that occurred this past month; my neighbors and I are most grateful for this and I commend Ms. Johnson and Ms. Atkins.

LETTERS OF NOTIFICATIONS AND PUBLIC NOTICE: Mrs. Dotson read the Public Hearing Protocol. Ms. Johnson stated that to the best of her knowledge, the cases before the Board of Zoning Appeals for a public hearing had been properly advertised, posted, and letters of notification sent to adjoining property owners.

SPECIAL PERMIT #SPPT04-CR-011, DAVID C. DILLEN (OWNER) & JOHN AND PATRICIA NORTH (CONTRACT OWNERS)

Applicants are seeking special permit approval to locate a bed and breakfast with a maximum of ten (10) guests on the property, PIN #7902-89-5059, located at 8871 Rogues Road, Cedar Run District, Warrenton, Virginia.

Ms. Johnson stated that the BZA made a site visit last month and held a public hearing on this issue, with the public hearing was kept open. Ms. Johnson reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. North, applicant, noted agreement with the staff report. He stated that since the last meeting he and his wife had held meetings with the public in the Casanova area to talk to people, answer their questions and to try and address concerns. Mr. North noted that most people had expressed support for the Bed and Breakfast element of the proposal, with most concerns related to the activities not under consideration by the BZA.

He noted specific concerns among the neighbors about traffic on Rogues Road. Mr. North noted he had letters and emails from people that he could share, but that most state objections to the element other than the Bed and Breakfast.

Mr. North reiterated that the Bed and Breakfast proposal is for a maximum of ten guests in five bedrooms, with the only meal being provided being breakfast. He stated his belief that the Bed and Breakfast would afford a good opportunity for the community to gain additional business from those guests who would then frequent various locations in the community; they would be able to go to the various places in the community, i.e., historical places, wineries, and stores, with the bed and breakfast used as the base to tour the area.

Mr. Chris Baker, manager of Spring Hill Farm, stated opposition to the bed and breakfast, noting the commercial venture's incompatibility with current zoning and existing uses in the surrounding area, which are rural and agriculture, with farms and residences but no businesses. He stated that a business coming into this immediate community brings nothing positive to that community. There are no other businesses (stores, wineries) for anyone who is staying at this bed and breakfast to tour while they are in that area. Mr. Baker stated that the burden of proof should be on the applicant to show that the proposal is compatible with the neighborhood and consistent with the intent of the existing zoning. He noted he has not seen anything that shows where a bed and breakfast is consistent with the zoning that is already there. Mr. Baker noted an additional issue was concern that approving the Bed and Breakfast would lead to special events, which would generate more extensive traffic and environmental impacts.

Ms. Mildred Riddell, lives in the Cedar Run District, stated she had a copy of a septic evaluation performed on the 17th of September 2003 at Melrose Castle by the Trustworthy Home and Termite Inspection, Inc. She noted that the report includes the caveat "A visual inspection of the drain field area has been completed on the above referenced property. At the time of the inspection there was no evidence of any malfunction. If this house has been vacant for any extended period, it may not be possible to detect these malfunctions on the date of the inspection". Ms. Riddell noted that Melrose Castle has been vacant for an extensive period and therefore a valid septic system analysis needs to be conducted. She further noted that the capacity given, 10-12 people, is insufficient for the proposal, and that the existing system is an "Orangeburg System," which is outdated and particularly susceptible to collapse due to root intrusion. Ms. Riddell further commented that the proposal is inconsistent with the rural development in the area, and a step in the wrong direction. Ms. Riddell stated that the proposal is not compatible with Spring Hill Farm, the largest thoroughbred farm in Virginia and the largest private employer in Fauquier nor with her own smaller farm which is protected with a perpetual open space easement

Mrs. Nancy Crawford, Casanova resident, stated that she officially objects to the special permit for the bed and breakfast at Melrose Castle. She noted that while a bed and breakfast might seem innocuous in itself and even charming, it is really a part in parcel of a larger scheme to commercialize an agricultural area, and, if it becomes a host facility

for large events, it will really be to the detriment of those who live in Casanova. She noted that Rogues Road cannot accommodate any increased traffic and is already hazardous, citing specific family accidents on the road.

Ms. Barbara Severin, resident of Scott District, stated that she is speaking to this particular proposal because a group of interested citizens in that vicinity are pursuing the prospect of having the area recognized as a historic area. A prior survey done of the County showed that Casanova and the Village of Auburn are both eligible for historic designation, and that the area between these two villages could also be included as an historic area. She stated that she did not know whether or not a bed and breakfast on a smallish scale is really a negative element when you want a historic district, but that the issue should be carefully considered because it might affect the effort underway for historic designation.

Mr. Martin Berkofsky, resident of Rogues Road, stated opposition to the application. He stated that he has lived in Casanova for over 9 years and has not seen anyone clamoring for a Bed and Breakfast, and that no need has been demonstrated for the facility. He expressed concern that a Bed and Breakfast would not be self-supporting and is only a prelude to a larger operation involving special events.

Mr. Meadows asked Mr. North if VDOT had commented on the entrance. Mr. North answered that VDOT was recommending the entrance be moved to the top of the hill to improve site distance. Ms. Johnson stated that this recommendation was made in conjunction with the special exception application for special events, and that VDOT had not responded as to whether the entrance relocation would be required if only the Bed and Breakfast was approved. Mr. North stated that he had no problem with doing the relocated entrance for the Bed and Breakfast.

Ms. Mailler asked Mr. North if he had Health Department approval for the septic provisions, or did that review come later, with the site plan. Mr. North stated that the review comes with the site plan. He also stated that the well was checked and the septic system checked and he notes that it is functioning properly.

Pursuant to Section 2.1-344(a)(7) of the Code of Virginia, Mr. Meadows moved to go into Closed Meeting for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to the Dillen/North Special Permit. The motion carried unanimously.

The BZA went into Closed Meeting.

The BZA came out of Closed Meeting, and Mr. Van Luven made the following motion, seconded by Mr. Tufts:

The Fauquier County Board of Zoning Appeals, having adjourned into Closed Meeting this day for the purposes stated in the resolution authorizing such Session, does hereby certify that to the best of each member's knowledge (I) only public business matters

lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and (II) only such public business matters as were identified in the motion by which the Closed Meeting was convened, were heard, discussed or considered in the Closed Meeting.

AYES: Ms. Mailler, Mr. Meadows, Mr. Van Luven, Mr. Tufts, Ms. Addison,
Mr. Rohrbaugh

NAYS: None

ABSTENTION: None

ABSENT: Mr. Eugene Lofdahl

On a motion made by Mr. Van Luven and seconded by Mr. Tufts, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the special permit, with the following findings and conditions:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards set forth in Section 5-302 of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully read, which apply to the use in question.
5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance)
 - (a) The Board of Zoning Appeals finds the type and quantity of traffic generated by the use will not adversely affect the safety of road usage on Route 602 (Rogues Road) or adversely affect the neighborhood.
 - (b) A sign of no more than nine (9) square feet no more than 10 feet in height.
 - (c) Such a use shall provide accommodations for not more than ten (10) persons, and no more than 10 persons, other than the owners

and staff, whether they or overnight guests or not, shall be allowed on the property at any given time.

- (d) Create turn in and turn out areas extending 25' to 50' left and right of the driveway to allow easier access from exit to Rogues Road or as directed by VDOT during the site plan but as a minimum create the turn in and turn out exits of 25' to 50' left and right as indicated in the external improvements of the application.
- (e) Entrance to Melrose shall be moved to the crest of the hill as suggested by VDOT.
- (f) Special permit approval will not convey with the sale of the property other than with the Norths.
- (g) Approval is subject to Health Department approval for the number of persons allowed on site.
- (h) Approval is subject to site plan approval.

The motion carried unanimously.

SPECIAL PERMIT #SPPT04-CR-012, JOSEPH DEVITO (OWNER)

Applicant is seeking special permit approval under Section 6-302.14 to conduct gunsmithing as a home occupation on his property, PIN #6993-50-5793, located at 6092 Miles Lane, Cedar Run District, Warrenton, Virginia.

Mr. Doug Morgan stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. DeVito, owner, appeared at the meeting and agreed with the staff report. He stated that he was only going to do minor gun repair and alterations. He stated that no shooting of guns will occur on the site; if a test on the gun is needed, it will be done at Clarke Brothers. He further stated that all shipping and receiving is done from his business in Manassas, and that the gunsmithing is a part-time hobby.

Mr. Rohrbaugh asked Mr. DeVito if a gun safe on the property. He stated that he does and that there are no guns stored outside of the gun safe. He stated there was no ammunition stocked at the property.

Ms. Mailler asked Mr. DeVito if gunsmithing requires a Federal permit. Mr. DeVito stated yes, and that they are ready to give it to him if and when the special permit is approved. He stated that the ATF has been to the property and checked the house, the gun safe, and performed a background check. They stated everything was fine but they were waiting on the Zoning approval.

Ms. Geneva Johnson, neighbor, stated opposition to this permit. She stated concerns about the business growing and people shooting guns. She does not want a commercial enterprise in the subdivision.

Ms. Carolyn Newrocki, neighbor, stated opposition to this permit. She stated one major concern is shooting in the area. She has horses and livestock on the property and people have shot at deer through where the animals are.

Mr. Meadows asked Mr. DeVito if he would have more than one client at a time on the property if the special permit was granted. Mr. DeVito stated no and, since he works during the day, the people would come to his place of business in Manassas.

Ms. Mailler asked Mr. DeVito if he was going to only be working on the guns. Mr. DeVito stated that the clients will drop the guns off at his place of business in Manassas and he just brings them home to work on them. Ms. Mailler asked where he test fired the guns. Mr. DeVito stated at Clarke Brothers, Chantilly, or Blue Ridge. It depends on where he is at during the day.

Mr. Rohrbaugh asked if Mr. DeVito would receive an ATF permit with this and upon issuance would he supply Zoning with a copy. Mr. DeVito stated yes and he would provide a copy to Zoning.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Van Luven, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code 5-009 had been provided, and voted to approve the special permit, with the following findings and conditions:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards for Home Occupations set forth in Section 6-302 which apply to the use in question.
5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:
 - (a) No weapons associated with the business shall be fired on the subject property.
 - (b) The permit does not convey with the sale of the property.
 - (c) Subject to State and Federal regulations.
 - (d) Staff to be provided copy of Federal permit.
 - (e) No ammunition sales and no ammunition stored on subject property other than for personal use.
 - (f) No more than one client on premises at any given time.

The motion carried unanimously.

SPECIAL PERMIT #SPPT04-CT-013, JAMES M. & BARBARA J. STEWART (OWNERS)

Applicants are seeking special permit approval to have gunsmithing as a home occupation under Section 6-302.14 (The BZA granted a special permit for this use on November 5, 1998, and the applicants wish to renew with no time limitation.), PIN #6995-90-8188, located at 7450 Maple Court, Center District, Warrenton, Virginia.

Mr. Morgan stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. Stewart, owner, appeared at the meeting representing the application and noted agreement with the staff report.

On a motion made by Mr. Meadows and seconded by Mr. Van Luven, that the Board defer the application until the next scheduled meeting.

The motion carried unanimously.

Ms. Mailler stated that Mr. Stewart should meet with the staff before the next meeting.

SPECIAL PERMIT #SPPT04-CR-014, DONALD L. & DEBRA L. SHERBEYN (OWNERS)

Applicants are seeking special permit approval under Section 3-313.9 to conduct a massage therapy business from their property, PIN #7816-89-1656, located at 13199 Elk Run Road, Cedar Run District, Bealeton, Virginia.

Mr. Morgan stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. & Mrs. Sherbeyn, owners, appeared at the meeting representing the application and noted agreement with the staff report.

Ms. Mailler reiterated the hours of operation and that there would be no employees. Mrs. Sherbeyn agreed. Ms. Mailler asked about a sign. Mr. Meadows stated that permit would have to be re-advertised to include the sign. Ms. Johnson stated that there is no special standard in this regulation for a sign for this type of use. They would apply for a permit under Article 8. Mr. Van Luven asked if the Board could approve this permit as it is and then they can apply later for the sign. Ms. Gallehr stated the Board could approve the permit as it is and put an additional condition on the permit to limit the size of the sign to the existing ordinance or less than the ordinance allowed, if desired.

On a motion made by Mr. Tufts and seconded by Mr. Meadows, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier

County Code 5-009 had been provided, and voted to approve the special permit, with the following findings and conditions:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:
 - (a) Hours of operation: Monday 2 p.m. – 8 p.m.
Thursday & Friday 4 p.m. – 8 p.m.
Every Other Saturday 12 noon – 8 p.m.
 - (b) No employees
 - (c) Time limit of the special permit to be five (5) years.
 - (d) Subject to site plan approval.

The motion carried unanimously.

Mr. Meadows asked Mr. Sherbeyn if he could alert clients as they pull out of the driveway to notice the crest to the right and the crest to the left. Mr. Sherbeyn stated that is why the driveway entrance is so wide but that he could alert the clients.

SPECIAL PERMIT #SPPT04-LE-015, FRED W. MICHEL (OWNER)

Applicant is seeking special permit approval under Sections 318-9 and 5-1803 to operate a wholesale greenhouse from the property, PIN #6899-58-8611-000, located at 6129 Catlett Road, Lee District, Bealeton, Virginia.

Mr. Morgan that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. Michel, owner, appeared representing the application and noted agreement with the staff report. He stated that he would like to do the greenhouses in phases.

Ms. Mailler asked Mr. Michel if he planned on building four (4) greenhouses. Mr. Michel stated he would like to build 4 eventually. Ms. Mailler asked Mr. Michel if it was to be wholesale only and that he would be delivering only and no large trucks coming in. The Board was concerned with the driveway entrance and wanted this clarified. Mr. Michel stated he has no desire to be a retail business.

On a motion made by Mr. Van Luven and seconded by Mr. Rohrbaugh, the BZA noted that due notice and hearing as required by the Code of Virginia Section 12.2-2204 and Fauquier County Code 5-009 had been provided, and voted to approve the special permit, with the following findings and conditions:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards for Greenhouses set forth in Section 5-1803.
5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:
 - (a) Wholesale use only.
 - (b) Vehicular traffic limited to delivery outwards only.

The motion carried unanimously.

VARIANCE #ZNVA04-CR-004, WILLIAM R. AND TONIA SMITH, III (OWNERS)

Applicants are seeking a 35' variance to the front yard requirement for a single family dwelling, PIN #7924-39-5962, located on Payne Lane, Cedar Run District, Nokesville, Virginia.

Mr. Morgan stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. and Mrs. Smith, applicants, appeared representing the application and agreed with the staff report. Mrs. Smith stated that this was a family transfer and, due to the recent death of her father, it would greatly help her to live close to her mother and be able to take care of her.

Ms. Mailler stated that the Board had discussions about possibly having better ways of doing this variance. Mr. Meadows asked Mr. & Mrs. Smith if they would allow the Board to defer this variance so that they could work with the staff in possibly situating the house differently.

On a motion made by Mr. Meadows and seconded by Mr. Rohrbaugh, the BZA moved to defer the action on this variance until the next regularly scheduled meeting and close the

public hearing. On a motion made by Mr. Tufts and seconded by Mr. Meadows, the BZA moved to strike the closing of the public hearing.

The motions carried unanimously.

ADJOURNMENT: There being no further business before the Board, the meeting adjourned at 3:23 P.M.

Margaret Mailler, Chairperson

John Meadows, Secretary

Copies of all files and materials presented to the Board are attached to and become a part of these minutes. A recording of the meeting is on file for one year.